

**ORIGINAL****In the United States Court of Federal Claims****FILED**

MAR 11 2011

**U.S. COURT OF  
FEDERAL CLAIMS**\* \* \* \* \*  
RONALD F. BERKLEY, et al.,

Plaintiffs,

v.

UNITED STATES,

Defendant.  
\* \* \* \* \*

No. 98-943C

Filed: March 11, 2011

**ORDER**

A joint Stipulation for Entry of Judgment for plaintiff Kenneth C. Rogers was submitted to the court on March 9, 2011. The Clerk's Office shall **FILE** the joint stipulation by leave of the court. On February 20, 2004, the court approved a Settlement Agreement between the certified opt-in class of 626 plaintiffs and the United States in the above captioned case. Mr. Rogers elected to be considered for retention in the United States Air Force by a Special Board convened pursuant to the Settlement Agreement, and was selected for retention. The Settlement Agreement provided that plaintiffs selected for retention shall receive back pay and allowances, less offsets, less a specified amount for costs, expenses and attorney's fees.

Judgment for the above named plaintiff shall be entered pursuant to the terms of the attached joint Stipulation for Entry of Judgment. Judgment shall be entered in exchange for a total payment from the United States in the amount of \$385,493.63, to be paid as follows: \$306,457.99 of that total amount representing net back pay to be paid to plaintiff's attorney, Barry P. Steinberg, for subsequent distribution to the plaintiff, in accordance with the terms of the attached joint Stipulation for Entry of Judgment; \$46,045.77 to be paid to representatives of the United States for subsequent deposit by those representatives into the individual Thrift Savings Plan account of the plaintiff; and \$32,989.87 to be distributed by representatives of the United States as tax payments. The court, therefore, **DISMISSES**, with prejudice, the claims of Kenneth C. Rogers, with each party to bear its own costs, attorney's fees and expenses pursuant to the attached joint Stipulation for Entry of Judgment. As Mr. Rogers is the last remaining plaintiff in the above captioned case and original lawsuit, with this entry of judgment the entire case shall be **CLOSED**.

**IT IS SO ORDERED.**
  
**MARIAN BLANK HORN**  
 Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

RONALD F. BERKLEY, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 98-943C
THE UNITED STATES,	)	(Judge Horn)
Defendant.	)	
	)	

STIPULATION FOR ENTRY OF JUDGMENT

To settle the claims asserted in the complaint for the sole remaining plaintiff in this case and to permit the entry of final judgment on those claims, without constituting an admission of liability on the part of defendant, it is stipulated and agreed between the United States and the one individual plaintiff named in paragraph 3 of this stipulation:

1. In 1998, plaintiffs filed No. 98-943C, a class action lawsuit, seeking damages for, and in relation to, their separation from active duty in the United States Air Force through operation of the Fiscal Year 1993 Reduction in Force board ("FY 93 RIF").
2. The parties have agreed to settle this case upon the terms stated in the Settlement Agreement approved by this Court on February 20, 2004.
3. The plaintiff named below elected to be considered for retention in the Air Force by a Special Board convened as required by the settlement agreement. The plaintiff was considered by a Special Board and was selected for retention. Paragraph 4.q. of the settlement agreement in applicable part provides:

A plaintiff who is selected for retention under the Board Option will receive the backpay and allowances, less offsets, as described in paragraphs 4.i, 4.j, 4.m, 4.n, and 4.o of this Settlement Agreement; less the \$2,100 in costs, expenses and attorney fees set forth in subparagraph 4.r; .... The parties shall file a single stipulation of judgment in favor of all selectees within 30 days of all events which fix liability for backpay as described in paragraphs 4.i, 4.j, 4.m, 4.n, and 4.o of

this Settlement Agreement. The sum of this judgment shall be the sum of the backpay owed all selectees as calculated pursuant to paragraphs 4.i, 4.j, 4.m, 4.n, and 4.o of this Settlement Agreement ....

The calculations have been concluded for the class member named below, and the amount of back pay to be distributed to him, the funds to be deposited in his thrift savings account, the funds to be paid to the Defense Finance and Accounting Service to be withheld as taxes, and the total judgment to be entered against the United States follows:

<b>Class member</b>	<b>Net Amount of back pay</b>	<b>TSP*</b>	<b>Taxes **</b>	<b>Gross Amount</b>
Rogers, Kenneth C.	\$306,457.99	\$46,045.77	\$32,989.87	\$385,493.63
<b>Total Amount of Stipulated Judgment</b>				\$385,493.63

\*Thrift Savings Plan

\*\*Federal & State Taxes withheld including employer's and employee's contributions for FICA (Social Security and Medicare)

Accordingly, in compliance with the terms of the settlement agreement, the foregoing plaintiff agrees to settle each and every one of his consolidated claims in this case in exchange for the actions already taken or being taken by the defendant in regard to his military career and entry of a judgment in the total amount of \$385,493.63 to be paid as follows:

- \$306,457.99 of that amount representing net back pay to be paid to his attorney, Barry P. Steinberg, for subsequent distribution by that attorney as required by the settlement agreement;
- \$46,045.77 to be paid to representatives of the United States for subsequent deposit by those representatives into the individual Thrift Savings Plan account of the plaintiff; and
- \$32,989.87 to be distributed by representatives of the United States as tax payments.

4. The United States consents to entry of judgment against the United States in favor of the named plaintiff as set out in paragraph 3.

5. Upon entry of judgment, the plaintiff named in this stipulation releases, waives, and abandons all other claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to the FY93 RIF or otherwise involved in this case, regardless of whether they were included in the complaint, including, but not limited to, all claims for costs, expenses, attorney fees, compensatory damages, and exemplary damages.

6. Other than reflecting the amount of tax withholdings being paid by the defendant to the United States Treasury in regard to the named class member, this stipulation is in no way related to or concerned with income or other taxes for which the plaintiff is now liable or may become liable in the future as a result of this stipulation or as a result of entry of a final judgment.


7. This stipulation is for the purposes of settling this case and permitting entry of final judgment, and for no other. Accordingly, this stipulation shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of this stipulation or the settlement agreement. This stipulation is only applicable to the plaintiff named in paragraph 3. However, as this plaintiff is the sole remaining plaintiff, the entry of judgment as to him would finally conclude this matter.


Respectfully Submitted,

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Attorney for Plaintiffs

Dated: \_\_\_\_\_

Attorneys for Defendant

Dated: 3/9/2011

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify under penalty of perjury that on this 9th day of March, 2011, I caused to be placed in the United States mail (first class mail, postage prepaid) copies of "STIPULATION FOR ENTRY OF JUDGMENT" as follows:

Barry P. Steinberg, Esq.  
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Estelle M. Braun